



Reprinted
April 11, 2003

ENGROSSED SENATE BILL No. 201

DIGEST OF SB 201 (Updated April 10, 2003 3:34 PM - DI 87)

Citations Affected: IC 36-7; IC 36-9.

Synopsis: Land use. Specifies that review of a land use decision of a legislative body or the board of zoning appeals by certiorari is initiated by filing a petition with the court. Sets forth the persons that a remonstrator must notify of the filing of a petition for writ of certiorari. Provides that an adverse party is not required to be named as a party to the petition for writ of certiorari. Provides that a person who is not an elected official may serve on an advisory plan commission, which is created by joinder agreement, in the place of a commission member who: (1) is also member of a local legislative body; and (2) refuses to serve. Allows a county building authority to sell revenue bonds at a private or negotiated sale.

Effective: Upon passage; July 1, 2003.

Clark

(HOUSE SPONSORS — HINKLE, STEVENSON)

January 9, 2003, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

February 13, 2003, reported favorably — Do Pass.

February 17, 2003, read second time, ordered engrossed. Engrossed.

February 18, 2003, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Local Government.

April 8, 2003, reported — Do Pass.

April 10, 2003, read second time, amended, ordered engrossed.

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April 11, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED SENATE BILL No. 201

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-7-4-1003 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1003. (a) Each decision
3 of the legislative body under section 918.6 of this chapter or the board
4 of zoning appeals is subject to review by certiorari. Each person
5 aggrieved by a decision of the board of zoning appeals or the legislative
6 body may ~~present~~ **file with** the circuit or superior court of the
7 county in which the premises affected are located, a verified petition
8 setting forth that the decision is illegal in whole or in part and
9 specifying the grounds of the illegality. No change of venue from the
10 county in which the premises affected are located may be had in any
11 cause arising under this section.

12 (b) ADVISORY. The person shall ~~present~~ **file** the petition ~~to with~~
13 the court within thirty (30) days after the date of that decision of the
14 board of zoning appeals.

15 (c) AREA. The person shall ~~present~~ **file** the petition ~~to with~~ the
16 court within thirty (30) days after the ~~entry~~ **date** of that decision of the
17 board of zoning appeals.

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(d) METRO. The person shall ~~present~~ **file** the petition ~~to~~ **with** the court after the expiration of the period within which an official designated by the metropolitan development commission may file an appeal under section 922 of this chapter but within thirty (30) days after the date of that decision of the board of zoning appeals. However, if the official files an appeal, then only the decision of the metropolitan development commission sitting as a board of zoning appeals is subject to review by certiorari, in accordance with this section. The official or department of metropolitan development may not seek review by certiorari of a decision of a board of zoning appeals or the commission sitting as a board of zoning appeals.

SECTION 2. IC 36-7-4-1005 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1005. (a) On filing a petition for a writ of certiorari with the clerk of the court, the petitioner **for the writ of certiorari shall give notice of the petition as follows:**

(1) If the petitioner is the applicant or petitioner for the use, special exception, or variance, the petitioner shall have a notice served by the sheriff of the county on each adverse party as shown by the record of the case in the office of the board of zoning appeals.

(2) If the petitioner is not the applicant for the use, special exception, or variance and is a person aggrieved by the decision of a board of zoning appeals as set forth in section 1003 of this chapter, the petitioner shall have a notice served by the sheriff of the county on:

(A) each applicant or petitioner for the use, special exception, or variance; and

(B) each owner of the property that is the subject of the application or petition for the use, special exception, or variance.

The service of the notice by the sheriff on the chairman or secretary of the board of zoning appeals constitutes notice of the filing of the petition to the board of zoning appeals, to the municipality or county, and to any municipal or county official or board charged with the enforcement of the zoning ordinance. No other summons or notice is necessary when filing a petition.

(b) An adverse party under this section is any property owner whose interests are opposed to the petitioner for the writ of certiorari and who appeared at the hearing before the board of zoning appeals either in person or by a written remonstrance or other document that is part of the hearing record. If the petitioner was an unsuccessful appellant in the administrative appeal, or an unsuccessful petitioner or applicant for

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a variance, special exception, or special or conditional use, and the record shows a written remonstrance or other document opposing the interest of the petitioner that contains more than three (3) names, the petitioner shall have notice served on the three (3) property owners whose names appear first on the remonstrance or document. Notice to the other persons named is not required.

(c) Notice given under subsection (a) must state:

- (1) that a petition for a writ of certiorari, asking for a review of the decision of the board of zoning appeals, has been filed in the court;
- (2) the premises affected; and
- (3) the date of the decision.

(d) An adverse party who is entitled to notice of a petition for writ of certiorari under subsection (a) is not required to be named as a party to the petition for writ of certiorari.

SECTION 3. IC 36-7-4-1006 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1006. ~~On presentation of a petition for a writ of certiorari;~~ The court shall direct the board of zoning appeals, within twenty (20) days after the date ~~of the petition is~~ **filed**, to show cause why a writ of certiorari should not issue. If the board fails to show to the satisfaction of the court that a writ should not issue, then the court may allow a writ of certiorari directed to the board. The writ must prescribe the time in which a return shall be made to it. This time must not be less than ten (10) days from the date of issuance of the writ, and the court may extend the time.

SECTION 4. IC 36-7-4-1210.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1210.6. Notwithstanding any other provision of the law, an advisory plan commission that is created through a joinder agreement and is composed of nine (9) members some of whom are appointed from a legislative branch of local government, and it is determined by the appointing authority that no member of the legislative branch will accept an appointment to the plan commission, then the appointing authority may appoint a person from the community who is not an elected official to serve on the advisory plan commission for a term of one (1) year subject to being reappointed annually.**

SECTION 5. IC 36-9-13-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 30. (a) For the purpose of obtaining money to pay the cost of:

- (1) acquiring or constructing government buildings;
- (2) acquiring land;



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(3) acquiring systems;

(4) improving, reconstructing, or renovating government buildings, systems, or land;

(5) repaying any advances for preliminary expenses made to the building authority by an eligible entity;

(6) purchasing plans, designs, programs, and devices for governmental buildings or systems; or

(7) refinancing any loan made under section 31 of this chapter;

the board of directors of a building authority may issue revenue bonds of the authority.

(b) The bonds are payable solely from the income and revenues of the particular government buildings, systems, or land for which the bonds were issued.

(c) The bonds must be authorized by resolution of the board. The bonds:

(1) bear interest payable semiannually; and

(2) mature serially, either annually or semiannually, at times determined by the resolution authorizing the bonds.

However, the maturities of the bonds may not extend over a period longer than the period of the lease of the government buildings, systems, or land for which the bonds are issued.

(d) The bonds may, and all bonds maturing after five (5) years from date of issuance shall, be made redeemable before maturity at the option of the board of directors of the building authority. Such a redemption must be at the par value of the bonds, together with the premiums, and under the terms and conditions fixed by the resolution authorizing the issuance of the bonds.

(e) The principal and interest of the bonds may be made payable in any lawful medium.

(f) The resolution authorizing the issuance of the bonds must:

(1) determine the form of the bonds, including the interest coupons (if any) to be attached to them;

(2) fix the denomination or denominations of the bonds; and

(3) fix the place or places of payment of the principal and interest of the bonds, which must be at a state or national bank or trust company within Indiana and may also be at one (1) or more state or national banks or trust companies outside Indiana.

(g) The bonds are negotiable instruments under IC 26-1.

(h) The resolution authorizing the issuance of the bonds may provide for the registration of any of the bonds in the name of the owner as to principal alone.

(i) The bonds shall be executed by the president of the board of

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1 directors, the corporate seal of the authority shall be affixed to the
 2 bonds and attested by the secretary of the board, and the interest
 3 coupons (if any) attached to the bonds shall be executed by placing the
 4 facsimile signature of the treasurer of the board on them.

5 **(j) The bonds may be sold at a private sale, a negotiated sale, or**
 6 **a public sale.**

7 ~~(j) Notice~~ **(k) If the bonds are sold at a public sale, notice** of the
 8 sale of the bonds shall be published in accordance with IC 5-3-1.

9 ~~(k)~~ **(l)** The board of directors shall sell the bonds at public sale, for
 10 not less than their par value. The board shall award the bonds to the
 11 highest bidder, as determined by computing the total interest on the
 12 bonds from the date of sale to the dates of maturity and deducting from
 13 that amount the premium bid, if any. Any premium received from the
 14 sale of the bonds shall be used solely for the payment of principal and
 15 interest on the bonds. If the bonds are not sold on the date fixed for the
 16 sale, then the sale may be continued from day to day until a satisfactory
 17 bid has been received.

18 ~~(l)~~ **(m)** The board of directors may issue temporary bonds, with or
 19 without coupons. These bonds, which must be issued in the manner
 20 prescribed by this section, may be exchanged for the bonds that are
 21 subsequently issued.

22 **SECTION 6. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred Senate Bill No. 201, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 201 as introduced.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 10, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred Senate Bill 201, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

MOSES, Chair

Committee Vote: yeas 13, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 201 be amended to read as follows:

Page 3, after line 26, begin a new paragraph and insert:

"SECTION 5. IC 36-9-13-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 30. (a) For the purpose of obtaining money to pay the cost of:

- (1) acquiring or constructing government buildings;
- (2) acquiring land;
- (3) acquiring systems;
- (4) improving, reconstructing, or renovating government buildings, systems, or land;
- (5) repaying any advances for preliminary expenses made to the building authority by an eligible entity;
- (6) purchasing plans, designs, programs, and devices for governmental buildings or systems; or
- (7) refinancing any loan made under section 31 of this chapter;

the board of directors of a building authority may issue revenue bonds of the authority.

(b) The bonds are payable solely from the income and revenues of the particular government buildings, systems, or land for which the bonds were issued.

(c) The bonds must be authorized by resolution of the board. The bonds:

- (1) bear interest payable semiannually; and
- (2) mature serially, either annually or semiannually, at times determined by the resolution authorizing the bonds.

However, the maturities of the bonds may not extend over a period longer than the period of the lease of the government buildings, systems, or land for which the bonds are issued.

(d) The bonds may, and all bonds maturing after five (5) years from date of issuance shall, be made redeemable before maturity at the option of the board of directors of the building authority. Such a redemption must be at the par value of the bonds, together with the premiums, and under the terms and conditions fixed by the resolution authorizing the issuance of the bonds.

(e) The principal and interest of the bonds may be made payable in any lawful medium.

(f) The resolution authorizing the issuance of the bonds must:

- (1) determine the form of the bonds, including the interest coupons (if any) to be attached to them;
- (2) fix the denomination or denominations of the bonds; and

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(3) fix the place or places of payment of the principal and interest of the bonds, which must be at a state or national bank or trust company within Indiana and may also be at one (1) or more state or national banks or trust companies outside Indiana.

(g) The bonds are negotiable instruments under IC 26-1.

(h) The resolution authorizing the issuance of the bonds may provide for the registration of any of the bonds in the name of the owner as to principal alone.

(i) The bonds shall be executed by the president of the board of directors, the corporate seal of the authority shall be affixed to the bonds and attested by the secretary of the board, and the interest coupons (if any) attached to the bonds shall be executed by placing the facsimile signature of the treasurer of the board on them.

(j) The bonds may be sold at a private sale, a negotiated sale, or a public sale.

~~(j) Notice~~ **(k) If the bonds are sold at a public sale, notice** of the sale of the bonds shall be published in accordance with IC 5-3-1.

~~(k) (l)~~ **(l)** The board of directors shall sell the bonds at public sale, for not less than their par value. The board shall award the bonds to the highest bidder, as determined by computing the total interest on the bonds from the date of sale to the dates of maturity and deducting from that amount the premium bid, if any. Any premium received from the sale of the bonds shall be used solely for the payment of principal and interest on the bonds. If the bonds are not sold on the date fixed for the sale, then the sale may be continued from day to day until a satisfactory bid has been received.

~~(l) (m)~~ **(m)** The board of directors may issue temporary bonds, with or without coupons. These bonds, which must be issued in the manner prescribed by this section, may be exchanged for the bonds that are subsequently issued."

Page 6, after line 20, begin a new paragraph and insert:

"SECTION 7. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to ESB 201 as printed April 8, 2003.)

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 201 be amended to read as follows:

Page 3, after line 25 , begin a new paragraph and insert:

"SECTION 4. IC 36-7-4-1210.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1210.6. Notwithstanding any other provision of the law, an advisory plan commission that is created through a joinder agreement and is composed of nine (9) members some of whom are appointed from a legislative branch of local government, and it is determined by the appointing authority that no member of the legislative branch will accept an appointment to the plan commission, then the appointing authority may appoint a person from the community who is not an elected official to serve on the advisory plan commission for a term of one (1) year subject to being reappointed annually.**"

(Reference is to ESB 0201 as printed February 14, 2003.)

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